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THE MONTANA ETHICS ACT

As prepared by the Montana Ethics Advisory Council

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THE MONTANA ETHICS ACT

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John Vincent, Ethics Advisory Council Chairperson

Mike Cooney, Secretary of State

SECRETARY OF STATE
STATE OF MONTANA

Mike Cooney
Secretary of State

Montana State Capitol
PO Box 202801
Helena, MT 59620-2801

September 21, 1994

It is my pleasure to present you with this report of the Ethics Advisory Council.

For too long, Montana has been without an enforceable set of laws regarding ethics in government. A decade ago, Montana's ethics laws were struck down by a district court decision that found the delegation of enforcement authority to be inappropriate. Since that time, no legislative session has been able to agree on a proposal to fill the void left by the court's decision.

At the same time, national events led to a decline in the public's confidence in government. By 1992 public confidence in government's ability to adequately represent us had fallen to an all time low.

The relationship between people and our government is complex. It is about equal parts of trust, accountability, competence, diligence, and honesty, and the relationship is in trouble.

Will passage of a Montana Ethics Act solve this problem and save our relationship with our government? No. Does it mean that the Montana Ethics Act is part of a solution and a first step toward an answer? Yes.

That's why a year ago I asked an extraordinary group of Montanans to serve on my Ethics Advisory Council. This document represents the fruits of their considerable labors, and on behalf of all Montanans I want to thank them for their dedication, wisdom and patience. Over the past year, the Ethics Advisory Council has held public hearings, has met in person and by phone, has culled through literally thousands of pages of position papers, model laws and other proposals in their effort to develop a reasoned approach that will work for us here in Montana.

The result is a proposal that establishes a meaningful framework for the implementation of ethics legislation that will help re-connect government and the people it serves. The proposal would establish a method for the handling of conflicts of interest and sets some meaningful guidelines for the conduct of public officials.

It is an important document, and I hope that you will take this opportunity to review it and to let me, the Council, and your legislators know what you think.

Thank you for your interest in this important issue. There is still a great deal of work to be done before a comprehensive government ethics bill becomes law, but together there's nothing we can't do.

Sincerely,

Mike Cooney

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Montana Ethics Advisory Council

Emily Budziak Williams recently defended her doctoral dissertation in the Department of Philosophy at the University of Illinois at Chicago. Her area of specialization is ethical theory. Ms. Budziak Williams did her undergraduate work at the University of Vermont and received her Masters of Philosophy from the University of Illinois in Chicago. From 1988 to 1990, Ms. Budziak Williams taught several courses in philosophy at the University of Chicago. In 1990, she taught at Montana State University in Bozeman. She currently resides on the Board of Directors for the Association for Philosophy of Education. Residing in Bozeman, Ms. Budziak Williams plans to continue teaching Philosophy, with a concentration in ethics.

David Hoffman served in the Montana House of Representatives in 1991 and 1992. Prior to his public service, Mr. Hoffman graduated from the University of Montana School of Law. In 1984, Mr. Hoffman practiced in Virginia City as a partner in the *Law Firm of Jones & Hoffman*. In 1993 the firm expanded the practice to Dillon and Virginia City under the firm name of *Jones, Hoffman & Suenram*. In addition to his private practice, Mr. Hoffman served as the Madison County Deputy Attorney from 1989 to 1992. Residing in Dillon, Mr. Hoffman currently serves as the Vice-Chairmen of the Montana Board of Pardons.

Bernd Hoffmann Ethics Coordinator for the Internal Revenue Service, is responsible for ensuring that the IRS is actively committed to doing business in a manner that warrants the highest degree of public confidence in the integrity, efficiency, and fairness of the Internal Revenue Service. Mr. Hoffmann is responsible for ensuring that all actions and decisions made throughout the agency meet national standards and are consistent with basic ethical principles. He started his government career with the Montana Department of Labor and Industry and spent six years attached to the Governor's Office as the Public Involvement Director and Administrative Officer for the Northwest Power Planning Council. Mr. Hoffmann began his federal government career with the IRS in 1988, and serves as the Montana District's Ethics and Quality Improvement Coordinator. He currently resides in Helena.

Elizabeth "Betsy" Horsman-Wiitala graduated from Pennsylvania State University in 1982 and the Dickinson School of Law, Carlisle, Pennsylvania, in 1985. After two years as a judicial law clerk for the Honorable John Henson, 4th Judicial District, Missoula, she began working in March 1988 as a special assistant attorney general with the State Compensation Insurance Fund. Currently, she works as a criminal prosecutor for the Attorney General. Ms. Horsman-Wiitala is a judicially-appointed member of the Helena Community Corrections Board and a member of the Advisory Committee for the Helena Family Planning Clinic. She and her husband, a local businessman, live in Helena.

MONTANA ETHICS ADVISORY COUNCIL, *(CONTINUED)*

Garth Jacobson serves as the Chief Legal Counsel to the Secretary of State. In 1980 he graduated with honors from the University of Montana with a degree in Economics and Philosophy and later went on to receive his law degree from the University of Montana Law School. He received his Masters in Public Administration in 1993 with his professional paper, *Conflict of Interest Laws in Montana*. A former President of the First Judicial District Bar Association, Mr. Jacobson is currently serving his second term as a member of the Board of Trustees of the State Bar of Montana Association. In addition to his legal work, he has won area and state awards from Toastmasters International. A native of Helena, Mr. Jacobson has been a counselor to Boys State for many years.

Amy Kelley graduated from Oberlin College in 1983 with a degree in government and environmental studies. Upon graduation, Ms. Kelley worked for the Public Interest Research Groups. Based in Boston, she was responsible for the publications of 15 states. In 1989 Ms. Kelley moved to Montana. During the 1993 Legislature she lobbied for ethics legislation, citizen enforcement, campaign funding and voter registration. A resident of Helena, Ms. Kelley is currently the Executive Director for Common Cause.

Pam Merrell has been a practicing Attorney for 16 years. In 1977 she graduated magna cum laude from the University of Utah, and went on to receive her law degree from the University of Utah College of Law. Currently, Ms. Merrell is the Vice President and Secretary of Montana Power Company in Butte. Along with her responsibilities to the general council at Montana Power, she is responsible for administering the code of Business Conduct. Additionally, Ms. Merrell works with the Investor Relations Department. Originally from Utah, Ms. Merrell has lived in Montana for 13 years.

James Polsin is a Professor in the Department of Communication Studies at the University of Montana. His present courses include Advanced Communication, Persuasion, Intercultural Communication, and Ethics of Communication. During the academic year 1989-90, Mr. Polsin acted as the University of Montana Exchange Professor to Shanghai International Studies University in the Peoples Republic of China. Over the years he has been involved in conducting workshops for a variety of groups ranging from Job Corps to Church groups. A Montanan by choice and not birth, Mr. Polsin has been a resident for the last 27 years.

John Vincent served in the Montana House of Representatives from 1975 until 1990. During his 16 years of service, he served as the Speaker of the House in both 1985-86 and 1989-90. His legislative duties included the sponsorship of the nation's first PAC Campaign Spending Limitation Law in 1983. Mr. Vincent currently serves as the Mayor Pro Tempore of the City of Bozeman. In 1994 he will obtain the position of Mayor. Mr. Vincent has been a teacher of government and history at Bozeman High School for 22 years.

A History of the Montana Ethics Act

July 15, 1993	Secretary of State Cooney appoints ten members to the Montana Ethics Advisory Council
August 23, 1993	The first meeting of the Ethics Advisory Council in Helena. *Council begins draft legislation.*
December 6, 1993	Second meeting of the Ethics Advisory Council in Helena. *Council determines the scope of the legislation.*
February 4, 1994	Third meeting of the Ethics Advisory Council in Missoula. *Council reports on Ethics Enforcement, Due Process, Ethics Education, Post Employment Restrictions, Lobbying, Definitions and Conflict of Laws Language, Disclosure Issues, and Agency Structure.*
March 3, 1994	Fourth meeting of the Ethics Advisory Council in Bozeman. *Council begins refining legislation, concentrating primarily on definitions, use of title and prestige, nepotism and the misuse of office.*
April 15, 1994	Fifth meeting of the Ethics Advisory Council in Butte. *Council continues work on legislation, including completing sections on financial disclosure, establishment of an ethics commission, investigation procedures and an ethics education program.*
May 17, 1994	Sixth meeting of the Ethics Advisory Council in Great Falls. *Council concentrates on the enforcement of ethics and the gift threshold issue.*
July 18, 1994	Seventh meeting of the Ethics Advisory Council in Kalispell. *Council finalizes legislation.*
September 12, 1994	Eighth meeting of the Ethics Advisory Council, conference call. *Council discusses finalized legislation and approves it for circulation to the public for input.*
September 19, 1994	Chairperson John Vincent presents finalized legislation to Secretary of State Mike Cooney.

A History of the Montana Ethics Act, *(continued)*

October 10, 1994	Public input on Montana Ethics Act due to the Secretary of State's office in Helena.
October 12, 1994	Final meeting of the Ethics Advisory Council, Helena. *Council will meet and discuss comments received from the public and incorporate them as possible in the legislation.*
October 14, 1994	Legislation submitted to Legislative Council for bill drafting.
January, 1995	Legislation presented to the 1995 Montana State Legislature.

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MONTANA

Ethics Council convenes

Stricter code on agenda

By BOB ANEZ
Associated Press Writer

A stricter code of ethics for public officials and tougher enforcement of such laws are the likely products of a new Ethics Advisory Council, the chairman said Monday.

"There's a feeling in the state that, if there is a code of ethics, it is inadequate and doesn't address potential problems," said John Vincent, a Bozeman teacher and former legislator.

Citizens and public officials have a lot of questions about what amounts to a conflict of interest, illegally accepting gifts and voting on issues that could benefit a lawmaker personally, Vincent said.

The council's review of the existing code of ethics and recommendations for change should address some of those questions, he added.

Secretary of State Mike Cooney created the 10-member council in June, directing it to give suggestions to the 1995 Legislature. He noted then the lack of enforcement laws for violations of the law against conflicts of interest in official actions.

On Monday, several council members emphasized the need for spelling out penalties to violators and lamented the decline of public confidence in government and its officials.

Cooney told the council its work should bring the issue of ethics to the forefront where it belongs.

"For too long, the topic of ethics in government has been relegated to the back alleys of public debate," the Democrat said. "Ethical problems have either been ignored or dismissed as one-time indiscretions and not as symptomatic of a problem worthy of public disclosure."

EXISTING LAWS

Here is a summary of major portions of existing state laws covering conduct of public officials.

The law states that holding a public office is a public trust created by the confidence that citizens place in the integrity of public officers, legislators and employees.

Public officers and employees:

- May not disclose or use confidential information obtained in their job for their personal economic benefit.
- Cannot accept a gift of substantial value or an economic benefit that amounts to a gift if the gift would tend ot influence their decisions or act as reward for an official action
- Should not have a financial interest in any business which could financially benefit by their official actions
- Should not immediately after resigning take a new job in which they will have an advantage due to their public employment.
- Should not take actions that would harm a competitor of a business in which they have a financial interest
- May not use state time, facilities and equipment for personal business
- Cannot have substantial private business financial dealings with a person they regulate or supervise.
- May not help, for a fee, someone to get a state contract, claim, license or other economic benefit from his agency.
- May not seek or accept a job with someone they regulate without first notifying a supervisor and department director.

A legislator:

- May not accept a fee, other than state pay, for promoting or opposing legislation.
- May not use his or her office to seek a job or solicit business.
- Should consider revealing or eliminating any conflicts of interest before voting on a bill.

Ethics Advisory Council members David Hoffman, left, and Amy Kelley listen along with Secretary of State Mike Cooney, in the background, as the council convened for the first time in the Capitol Monday. (Staff photo by Gene Fischer)

EXECUTIVE SUMMARY

The purpose of the proposed Montana Ethics Act is to provide an understandable, comprehensive and enforceable package of ethics legislation.

The State of Montana has operated without any real ethics law enforcement since the 1972 Constitution mandated a prohibition against conflicts of interest. The following is a brief explanation of some of the major features of the proposed legislation.

I. Ethics Enforcement

The legislation establishes an enforcement mechanism to provide for the proper treatment of alleged violations of the Ethics Act. Enforcement is accomplished through the creation of the Ethics Commission which is selected in the same manner as the Reapportionment Commission. Investigation and prosecution of ethic violations are performed by the Commissioner of Political Practices.

II. Financial Disclosure

The proposed legislation requires greater disclosure of financial information by elected officials and upper level administrators.

III. Ethical Behavior/Education

The proposal more specifically identifies the "dos and don'ts" of ethical behavior of public officials and employees. It also promotes education and advisory opinions to help state officials and workers avoid conflicts of interest.

IV. Guidance for the Legislature

This Act gives the citizen legislature guidance for having its members avoid improper conflicts of interest and gives it the flexibility to develop rules to resolve problems.

V. Limitations on Gifts

This Act sets limits for state officials, as to what gifts are acceptable to receive from non-family sources. Obviously cups of coffee are permissible, but expensive gifts are not. The act identifies what can be received and from whom.

Ultimately ethical behavior should come from within the people who serve in government. This act provides *guidance* and *assistance* to do the right thing. However, when that does not happen then the acts prescribes sanctions against violators.

One can disagree about some of the details and how stringent we should be. There can be no disagreement that we need to address this issue before it is too late.

While we generally have honest, decent people who serve in government there are always a few who exercise poor judgment or integrity. We don't need to wait for a scandal to drive the passage of ethics legislation. We need clear minds and honest individuals working to produce reasonable legislation that works for all Montanans.

With that spirit this proposal is offered for the public to comment and recommend improvements if necessary, so that the best possible legislation can be submitted to the 1995 Montana State Legislature.

A BILL FOR AN ACT ENTITLED THE MONTANA ETHICS ACT.

This shall be known as the Ethics, Conflict of Interest, and Personal Financial Disclosure Act.

§ 1 Intent and Purpose

The purpose of this act is to set forth an enforceable code of ethics prohibiting conflict between public duty and private interest as required by the constitution of Montana. The proper operation of democratic government requires that a public official or employee be independent and impartial; that government policy and decisions be made through the established processes of government; that a public official or employee not use public office to obtain private benefits; that a public official or employee avoid action which creates the appearance of using public office to obtain benefit; and that the public have confidence in the integrity of its government and public officials and employees.

§ 2 Definitions

As used in this act, unless the context clearly indicates otherwise, the following definitions apply:

(1) "Anything of value" includes the following:

(a) A pecuniary item, including money, or a bank bill or note.

(b) A promissory note, bill of exchange, order, draft, warrant, check, or bond given for the payment of money.

(c) A contract, agreement, promise, or other obligation for an advance, conveyance, forgiveness of indebtedness, deposit, distribution, loan, payment, gift, pledge, or transfer of money.

(d) A stock, bond, note, or other investment interest in an entity.

(e) A receipt given for the payment of money or other property.

(f) A right in action.

(g) A gift, tangible good, chattel, or an interest in a gift, tangible good, or chattel.

(h) A loan or forgiveness of indebtedness.

(i) A work of art, antique, or collectible.

(j) An automobile or other means of personal transportation.

(k) Real property or an interest in real property, including title to realty, a fee simple or partial interest, present or future, contingent or vested within reality, a leasehold interest, or other beneficial interest in realty.

(l) An honorarium or compensation for services.

(m) A rebate or discount in the price of anything of value unless the rebate or discount is made in the ordinary course of business to a member of the public without regard to that person's status as a public official or public employee, or the sale or trade of something for reasonable compensation that would ordinarily not be available to a member of the public.

(n) A promise or offer of employment.

(o) Any other thing of value that is pecuniary or compensatory in value to a person.

(p) The commission may also promulgate rules and regulations defining

additional things of value.

(q) "Anything of value" does not mean;

(i) a campaign contribution properly received and reported, if reportable, as required under the 13-1-101 Montana Code Annotated (MCA), to the extent that consideration of equal or greater value is not received.

(ii) Printed informational promotional material.

(iii) A gift that:

(a) is not used; and

(b) no later than thirty (30) days after receipt, is returned to the donor or delivered to a charitable organization and is not claimed as a charitable contribution for federal income tax purposes.

(iv) A gift, devise, or inheritance from an individual's spouse, child, parent, grandparent, brother, sister, parent-in-law, brother-in-law, sister-in-law, nephew, niece, aunt, uncle, or first cousin or the spouse of that individual, if the donor is not acting as the agent or intermediary for someone other than a person covered by this paragraph.

(v) A personalized plaque or trophy with a value that does not exceed one hundred and fifty dollars ($150).

(vi) Food and beverage consumed on the occasion when participation in a charitable, civic, or community event which bears a relationship to the public official's or public employee's office and the official or employee is attending in an official capacity.

(vii) Food and beverages or entertainment with a value of twenty five dollars ($25) or less, or gifts of nominal value, and which do not place or appear to place the recipient under obligation.

(viii) Educational material directly related to the public official or public employee's governmental duties.

(ix) An award publicly presented in recognition of public service.

(x) Commercially reasonable loans made in ordinary course of the lender's business.

(2) "Associated," when used with reference to an organization, includes an organization in which an individual or a member of his or her immediate family is a director, officer, fiduciary, trustee, agent, or partner, or owns or controls, in the aggregate, at least two (2) percent or a value of $1,000 or greater of the outstanding equity.

(3) "Business associate" includes the following:

(a) An employer.

(b) A general or limited partnership, or a general or limited partner within the partnership.

(c) A corporation:

(i) that is family-owned; or

(ii) in which all shares of stock are closely-held; or the shareholders, owners, or officers of the corporation.

(d) A corporation in which the public official or employee, or other person subject to the Act:

(i) has an investment interest;

(ii) owns; or

(iii) has a beneficial interest in shares of stock which constitute more than:

(A) five percent (5%) of the value of the corporation, or

(B) $1,000.

(e) A corporation, business association, or other business entity in which the public official or employee, or other person subject to the Act serves as an agent or a compensated representative.

(f) An association not otherwise covered by this definition between the public official or employee, or other person subject to the Act, and another person, which involves the conduct of a common for profit enterprise.

(4) "Candidate" means an individual who seeks nomination or election to state or district office. An individual is a candidate when the individual:

(a) files a statement of candidacy or petition for nomination for office with the appropriate filing officer;

(b) is nominated for office by:

(i) a party at a primary;

(ii) nominating convention; or

(iii) petition for nomination;

(c) solicits or receives and retains contributions, makes expenditures, or gives consent to an individual, organization, political party, or committee to solicit or receive and retain contributions or make expenditures to secure nomination or election to any office at any time, whether or not the office for which the individual will seek nomination or election is known when the:

(i) solicitation is made;

(ii) contribution is received and retained; or

(iii) expenditure is made; or

(d) is an officeholder who is subject of a recall election.

(5) "Charitable organization" means an organization identified in Title 35 Chapter 2 as a public benefit nonprofit corporation as it currently exists or as it may be amended.

(6) "Commission" means the Montana Ethics Commission as defined in §18 of this Chapter.

(7) "Compensation" includes anything of value except reimbursement of expenses if:

(a) the reimbursement does not exceed the amount actually expended for the expenses; and

(b) it is substantiated by an itemization of expenses.

(8) "Consultant" means an individual other than a public official or public employee who contracts to:

(a) evaluate bids for public contracts; or

(b) award public contracts;

for the state.

(9) "Family member" means an individual:

(a) who is the spouse, parent, sibling, child, mother-in-law, father-in-law, son-in-law, daughter-in-law, grandparent, or grandchild; or

(b) is a member of the individual's household.

(10) "Gift" means anything of value.

(11) "High level public employee" means a state employee with substantial policy-

making authority, generally at a grade 18 or higher, as designated by their respective agency, with approval of the Commission.

(12) "Immediate family" means an unemancipated child residing in a public official's or public employee's household; a spouse of a public official or public employee; or an individual claimed by the public official or public employee, or the public official's or public employee's spouse, as a dependent for tax purposes.

(13) "Informal representation" means a contact, including a request for information, whether in person, by mail, or by telephone, made with a state or local agency official or employee on behalf of a client or constituent.

(14) "Judge" means an official who presides over a state, county, or municipal court or an administrative law hearings officer.

(15) "Local entity" means a local or regional government office, department, division, bureau, board, or commission.

(a) The term does not include a court.

(16) "Negotiating" or "negotiate for employment" means a communication, directly or indirectly, with a prospective employer to discuss rendering services for compensation to that prospective employer.

(17) "Negotiation for employment" means the period that begins with a communication to a prospective employer to discuss rendering services for compensation to the prospective employer.

(18) "Official responsibility" means the direct administrative or operating authority, whether intermediate or final, and either exercisable alone or with others, and either personally or through subordinates, to approve, disapprove, or otherwise direct government action.

(19) "Participation" includes decision, approval, disapproval, recommendation, the rendering of advice, or vote.

(20) "Particular matter" includes a judicial or other proceeding, application, request for a ruling or other determination, contract, claim, controversy, investigation, charge, accusation, arrest, rule making, or special legislation, but excluding drafting of and voting on general legislation by the state legislature.

(21) "Person" means an individual, proprietorship, firm, partnership, joint venture, joint stock company, syndicate, business trust, estate, company, corporation, association, club, committee, organization, or group of person acting in concert.

(22) "Prime contractor" means a person who has entered into a public contract.

(23) "Prime contractor employee" means an officer, employee, or agent of a prime contractor.

(24) "Public contract" means a contractor for goods, services, or construction let by a unit of government.

(25) "Public employee" means an individual holding a position, including a person appointed to a position created by statute, whether compensated or not, in state government.

(26) "Public member" means a member appointed to a noncompensated part-time position on a board, commission, or council. A public member does not lose this status by receiving reimbursement of expenses or a per diem payment for services.

(27) "Public official" means an individual elected to a state or district office, or an individual who is appointed to fill a vacancy in the office, whether or not the individual has yet assumed the office.

(a) The term does not include a public member of an advisory board,

commission, or council as defined in 2-15-122, MCA.

(28) "Representation" means an appearance before a state or local entity whether gratuitous or for compensation.

(29) "State entity" means a state agency, office, department, division, bureau, board, commission, or council, including the legislature and the state university system.

(a) The term does not include a court or an agency in the judicial branch.

(30) "Subcontract" means a contract or contractual action entered into by a prime contractor or subcontractor for obtaining goods or services under a prime contract.

(31) "Subcontractor" means:

(a) a person, other than the prime contractor, who offers to furnish or furnishes goods or services under a prime contract or a subcontract entered into in connection with the prime contract; and

(b) a person who offers to furnish or furnishes goods or services to the prime contractor or a higher tier subcontractor.

(32) "Subcontractor employee" means an officer, employee, or agent of a subcontractor.

§ 3 Nepotism

(1) A public official or public employee shall not advocate or cause the:

(a) employment;

(b) appointment;

(c) promotion;

(d) transfer; or

(e) advancement to an office or position of the state, county, municipality, or political subdivision, or supervise or manage a member of the public official or public employee's household or family member or any person related or connected by consanguinity within the fourth degree or by affinity with the second degree.

(2) A public official or public employee shall not participate in an action relating to the employment or discipline of a member of the public official's or public employee's household or a family member.

(3) The provisions of subsection (1) do not apply to:

(a) a sheriff in the appointment of a person as a cook or an attendant;

(b) school district trustees if all the trustees, with the exception of any trustee who is related to the person being appointed and who must abstain from voting for the appointment, approve the appointment of a person related to a trustee;

(c) a school district in the employment of a person as a substitute teacher who is not employed as a substitute teacher for more than 30 consecutive school days; or

(d) the renewal of an employment contract of a person who was initially hired before the member of the board, bureau or commission or the department head to whom he/she is related assumed the duties of the office.

§ 4 Misuse of Office

(1) A public official or employee shall not use public funds, time, personnel, facilities, or equipment for the official or employee's private gain or that of another unless the use is authorized by law, legislative rule, collective bargaining agreement, or required for

professional responsibility obligations.

(2) A public official or public employee shall not use public funds, time, personnel, facilities, or equipment for political or campaign activity unless the use is:

(a) authorized by law; or

(b) properly incidental to another activity required or authorized by law.

(3) The state entity may adopt rules specifying examples of public benefit activities permissible or not permissible under this section.

§ 5 Representation by Public Officials and Public Employees

(1) (a) A state elective official other than a legislator shall not represent another person before a state or local entity, except as required by statute.

(b) A legislator shall not represent another person before a state entity, other than a court during a legislative session.

(c) A public official shall not represent another person before an entity of the same political subdivision which the public official serves, except as required by statute.

(d) A public official or public employee shall not represent another person before the entity the public official or public employee serves.

(e) A public employee of a bureau chief level or higher receiving compensation other than reimbursement or per diem payments for the public employee's official duties shall not represent another person before an entity of the same political division including a court.

(f) These restrictions do not apply to the following:

(i) Purely ministerial matters which do not require discretion on the part of the entity.

(ii) Representation by a public official or public employee in the course of the official or employee's official duties including uncompensated constituent representation by a legislator.

(iii) Representation of the public official or public employee in the official or employee's personal capacity.

(iv) Representation by an attorney who is a public official or a public employee before a court when such representation is not otherwise prohibited by applicable codes of attorney or judicial conduct.

(2) The restrictions set forth in this section do not apply if the former public official or former public employee is:

(a) testifying under oath to facts that are within the individual's knowledge, or as an expert witness who does not accept compensation other than regularly provided for by law, or rule for subpoenaed witnesses; or

(b) an elected representative of the federal government, or a local government within the state, or whose principal occupation or employment is with the federal government or a local government, and the appearance, communication, assistance, or representation is on behalf of the government.

§ 6 Conflicts of Interest in Votes, Deliberations, and Discussions

(1) A public official or public employee shall not participate in, vote on, influence, or attempt to influence an official decision if the public official or public employee or a business or organization with which the public official or public employee is associated has:

(a) a pecuniary interest in; or

(b) a reasonably foreseeable direct benefit from;

the matter under consideration by the governmental entity of which the public official or public employee is a member. A potential benefit includes detriment to a business competitor to the public official or public employee or business or organization with which the public official or public employee is associated.

(2) A public official or public employee may participate in, vote on, or influence or attempt to influence an official decision if the only pecuniary interest or reasonably foreseeable benefit that may accrue to the public official or public employee is incidental to the public official's or public employee's position, or which accrues to the public official or public employee as a member of a profession, occupation, or class, to no greater extent than the pecuniary interest or potential benefit could reasonably be foreseen to accrue to all other members of the profession, occupation, or class.

(3) The restrictions of this section apply to a business or organization with which a family member of a public official or employee is associated if the family member's pecuniary interest or a business or organization with which a family member is associated has a reasonably foreseeable benefit from a matter under consideration.

(4) A member of the Legislature, shall disclose or abstain from voting on the specific section of that year's general appropriation bill relating to a particular agency or commission if the member is employed by that agency. This subsection does not prohibit a member from voting on other sections of the general appropriation bill or from voting on the general appropriation bill as a whole. The public official's abstention must be recorded in the governmental entity's minutes.

(5) The Legislature may adopt rules governing conduct of its members consistent with the provisions of this section.

§ 7 Restraints on Solicitation or Acceptance of Gifts and Gratuities

(1) A person shall not, directly or indirectly, give, offer, or promise anything of value to a public official, public employee, or a person who has been elected or selected to be a public official or public employee, including members of said employee or official's immediate family, which can reasonably be inferred as intended or expected to benefit or influence:

(a) an official act;

(b) acts of fraud on a state, county, or municipal entity; or

(c) the performance of or failure to perform an act in violation of the public official or public employee's lawful duty.

(2) The entities named in subsection (1) shall not, directly or indirectly, ask, demand, exact, solicit, seek, accept, assign, receive, or agree to receive anything of value for him or herself, or for any other person or entity, in return for:

(a) the performance of an official act or act in violation of official duties; or

(b) committing, aiding in committing or colluding in, allowing acts of fraud, or making an opportunity for the commission of fraud on a state, county, [or municipal] governmental entity.

(3) A person shall not, directly or indirectly, give, offer, or promise to give anything of value to another person or entity, with intent to influence testimony under oath or affirmation in a trial or other proceeding before:

(a) a court;

(b) a committee of either house or both houses of the legislature; or

(c) an agency, commission, or officer authorized to hear evidence or take testimony, or with intent to influence a witness to fail to appear.

(4) A person shall not, directly or indirectly, ask, demand, exact, solicit, seek, accept, assign, receive, or agree to receive anything of value in return for influencing testimony under oath or affirmation in a trial or other proceeding before:

(a) a court;

(b) a committee of either house or both houses of the legislature; or

(c) an agency, commission, or officer authorized to hear evidence or take testimony, or with intent to influence a witness to fail to appear.

(5) Subsections (3) and (4) do not prohibit the payment or receipt of witness fees provided by law or the payment by the party upon whose behalf a witness is called and receipt by a witness of the reasonable cost of travel and subsistence at a trial, hearing, or proceeding, or, in the case of an expert witness involving a technical or professional opinion, a reasonable fee for time spent in the preparation of the opinion, and in appearing or testifying.

(6) A public official or employee shall not abuse the title and prestige of public office by receiving anything of value for the private benefit of the official or employee or his or her immediate family or an organization with which the official is associated, unless the public official or public employee can show by clear and convincing evidence that:

(a) the thing of value was conveyed for a reason unrelated to and not arising from the recipient's holding or having held a public office or public position; and

(b) was unrelated to actions or matters before or affecting the government body of which the public official's or public employee's office or employment is a part.

(7) No lobbyist or principal employing any lobbyist shall knowingly and willfully offer or give anything of value, act as an agent or intermediary in the giving of anything of value, or arrange for the giving of anything of value by any other person to a public official or high level public employee or a member of such person's immediate family, and no such person or immediate family member of such person shall knowingly and willfully solicit or accept from any lobbyist or principal employing a lobbyist anything of value.

(8) No lobbyist or principal employing a lobbyist shall contribute to, act as an agent or intermediary for contribution to, or arrange for the making of contributions to the campaign funds of any elected official during a legislative session.

§ 8 Private Interests by a Public Official or Public Employee in Public Contracts

(1) Public officials and public employees may not have an interest in any public contract made by them in their official capacity or by any body, agency, business or board of which they, or members of their immediate family, are members, employees, or otherwise associated. A former employee or official may not, within 6 months following the termination of his employment, contract or be employed by an employer who contracts with the state or any of its subdivisions involving matters with which he was directly involved during his employment. This section shall not apply if:

(a) the public official or employee in good faith and within 30 days of learning of an actual or prospective violation of this section makes full disclosure of said employee's or officials financial interest to the contracting agency and to

the agency, and terminates or disposes of the interest.

(2) In this section the term:

(a) "be interested in" does not include holding a minority interest in a corporation;

(b) "contract" does not include:

(i) contracts awarded to the lowest responsible bidder or proposer based on competitive bidding procedures, where the public employee or official has filed with the agency a statement making full disclosure of his or her interests in the contract, and the interests of said employee's immediate family in the contract;

(ii) merchandise sold to the highest bidder at public auctions;

(iii) investments or deposits in financial institutions which are in the business of loaning or receiving money;

(iv) a contract with an interested party if, because of geographic restrictions, a local government could not otherwise reasonably afford itself of the subject of the contract, as would be presumed if the additional cost to the local government is greater than 10% of a contract with an interested party or if the contract is for services that must be performed within a limited time period and no other contractor can provide those services within that time period.

(c) "former employee" does not include a person whose employment with the state was involuntarily terminated due to a reduction in force or other involuntary termination not involving violation of the provisions of this chapter.

(3) Public officials must not be purchasers at any sale or vendors at any purchase made by them in their official capacity.

(4) Every contract made in violation of any of the provisions of 2-2-201 or 2-2-202 may be voided at the instance of any party except the public official interested therein.

(5) Public officials and public employees are prohibited from purchasing or selling or in any manner receiving to their own use or benefit or to the use or benefit of any person or persons whatever any evidences of indebtedness against the state or any subdivision thereof except evidences of indebtedness issued to or held by them for services rendered as such officer, deputy, clerk, and evidences of the funded indebtedness of such state, county, city, township, town, or corporation.

(6) Every official whose duty it is to audit and allow the accounts of other public officials must, before allowing such accounts, require each of such officials to make and file with him an affidavit that he has not violated any of the provisions of this part.

(7) Public officials charged with the disbursement of public moneys must not pay any warrant or other evidence of indebtedness against the state, county, city, town, or township when the same has been purchased, sold, received, or transferred contrary to any of the provisions of this part.

(8) (a) Every public official charged with the disbursement of public moneys who is informed by affidavit establishing probable cause that any public official whose account is about to be settled, audited, or paid by him has violated any of the provisions of this part must suspend such settlement or payment and cause such public official to be prosecuted for such violation by the county attorney of the county.

(b) In case there be judgment for the defendant upon such prosecution, the proper public official may proceed to settle, audit, or pay such account as if not such affidavit had been filed.

§ 9 Actions Taken While Negotiating for Employment

A public official or public employee may not act or fail to take action in a matter affecting a person with whom the public official or public employee is negotiating for employment.

§ 10 Post Employment Restriction

(1) A former public official or former public employee may not represent, aide or advise a person in a particular matter before a government entity in which the former public official or former public employee participated personally and substantially while a public official or public employee.

(2) A former public official or former public employee may not represent a person in a particular matter which was pending under the former public official's or former public employee's official responsibility within one (1) year before the termination of that responsibility for one (1) year after the former public official's or former public employee's service in the public position has ceased.

(3) A former public official or former public employee may not represent a person in a matter before the government entity which the former public official or former public employee served for a period of one (1) year after the former public official's or former public employee's employment has ceased.

(4) A former public official may not register as a lobbyist or lobbyist's principal, other than for a government entity, for a period of one (1) year after the latter of:

(a) the date of leaving office; or

(b) the date the term of office to which the public official was elected expires.

§ 11 Blind Trusts

(1) A public official or public employee who has direct, indirect, or beneficial interest in a blind trust which meets the standards set forth below is not required to disclose the pro rata share of interests in real property or investments, or income deriving from such interests or investments, if those interests are acquired by the trustee after the trust complies with subsection (2).

(2) A blind trust must comply with the following conditions:

(a) the trustee must be:

(i) a disinterested party other than the public official or employee's spouse, child, parent, grandparent, grandchild, brother, sister, parent-in-law, brother-in-law, sister-in-law, aunt, uncle, first cousin, or the spouse of any such person;

(ii) someone who is not a public official or public employee; and

(iii) someone who has not been appointed to a public entity by the public official or public employee, or by a public official or public employee supervised by the filer.

(3) The trustee must be given complete discretion to manage the trust, including, but not limited to, the power to dispose of and acquire trust assets without consulting or notifying the filer.

(4) The trustee must be required to notify the filer of the date of disposition and value at disposition of any original investments or interests in real property so that information can be reported on the filer's personal financial disclosure statement.

(5) The trustee must be prohibited from disclosing to the filer any information concerning the replacement assets except for information required under this subsection or the minimum tax information which lists only the totals of taxable items from the trust and does not describe the source of individual items of income.

(6) A copy of the trust agreement must be filed with the agency within five (5) business days after execution, including:

(a) an identification of the assets placed in trust;

(b) a statement detailing the date of its creation, and the name and address of the trustee; and

(c) a statement signed by the trustee, under penalty of perjury, stating that he or she has not revealed any information to the filer, except that which is permitted under this section, and that, to the best of the trustee's knowledge, the trust is in compliance with this section.

(7) (a) If the trust is revoked while the filer is a public official or public employee, or if the filer learns of any replacement assets of the trust, the filer must file an amendment to the most recent statement of personal financial disclosure disclosing the date of revocation and the previously unreported pro rata share of the trust's interests in real property or investments or income deriving from any such interests in real property or investments, and disqualify himself or herself as necessary.

(b) For purposes of this section, any replacement of assets of which the filer learns shall thereafter be treated as though they were original assets of the trust.

§ 12 Personal Financial Disclosure

(1) Exception to Reporting Requirements. This section does not require the disclosure of financial information concerning the following:

(a) A spouse legally separated from the public official or public employee.

(b) A former spouse.

(c) A gift from a family member.

(d) A campaign contribution that is permitted and reported under the Campaign Finance Act, if required.

(2) Individuals Required to File. The following individuals shall file a statement of financial interests with the Commissioner of Political Practices:

(a) A public official or high level public employee.

(b) An individual nominated to become a public official or public employee.

(c) An individual who is a candidate to become a public official.

(d) A public member.

(e) A consultant.

(f) A spouse.

(3) Deadline for Filing Statements. The statement of financial interest must be filed for the preceding year no later than April 30 of each year, complete through December 31 of the preceding year, except:

(a) In the case of an individual nominated to be a public official, public

member, or public employee, no later than 21 (twenty-one) days after the nomination.

(b) In the case of a candidate to become a public official, at the time of filing for public office.

(c) In the case of a public employee employed after January 1, the later of April 30 or 21 days after employment.

(4) Filing Entity for Consultant Statements. A consultant shall file a statement of economic interests no later than twenty-one (21) days after entering into a contractual relationship with the state or a political subdivision if the consultant, or member of the household of the consultant has an economic interest in an entity:

(a) whose bid was evaluated by the consultant and who was subsequently awarded the contract by the state or the political subdivision that contracted with the consultant; or

(b) who was awarded a contract by the consultant.

(5) Amounts to be Reported:

(a) where an amount is reported, a filer must report information in the following category amounts unless otherwise indicated:

(i) $1,000 - $9,999

(ii) $10,000 - $24,999

(iii) $25,000 - $49,999

(iv) $50,000 - $99,999

(v) $100,000, or more.

(6) No candidate for public office and no individual defined in subsection (2) of this section shall be allowed to take the oath of office, enter or continue in his or her duties, or receive compensation from public funds unless he or she has filed a statement of financial interests with the Commissioner of Political Practices as required by this chapter.

§ 13 Commissioner of Political Practices Handling Disclosure of Statements

(1) The Commissioner of Political Practices may grant a reasonable extension of time for filing a statement of financial interests. The extension may not exceed thirty (30) days, except in cases of illness or incapacitation.

(2) A statement of financial interests becomes a public record available for copying when received by the Commissioner of Political Practices. A statement may be reviewed and copied at the office of the Commissioner of Political Practices during ordinary business hours.

(3) A statement of financial interests must be retained by the Commissioner of Political Practices for a period of five (5) years after filing in a form, including microfilming, that will facilitate document retention, except that:

(a) Upon the expiration of three (3) years after an individual ceases to be a public official, the Commissioner of Political Practices shall, unless the former public official otherwise requests, destroy any statements of financial interests or copies of such statements filed by the former public official and any copies in the possession of the Commissioner of Political Practices.

(b) Upon the expiration of three (3) years after any election at which a candidate for election as a public official was not elected, or a nominee for a public office or public employee is not confirmed in the position, the Commissioner of Political Practices shall destroy any statements of financial

interests or copies of such statements filed by him or her as a candidate,

(i) unless the individual is otherwise required to file a statement; or

(ii) unless the individual otherwise requests.

§ 14 Information Required

(1) A statement of financial interests must contain full and complete information concerning the following:

(a) The name, business or governmental address, and work place telephone number of the filer.

(b) The source, type, and amount or value of income received from a governmental entity by the filer and the filer's spouse and dependents.

(c) The source, type, and amount of income in cash or in-kind received by the filer and the filer's spouse, and dependents.

(d) The source, payee, type, date, and exact amount of gifts, including food, lodging, or entertainment:

(i) received by a filer and a filer's spouse and dependents; and

(ii) in excess of five hundred dollars ($500) aggregate from all sources in a calendar year, excluding from registered lobbyists and lobbying principles.

(e) The description (commercial, residential, or rural), value, and location of all real property owned during the calendar year by the filer and the same information for options to purchase such real property.

(f) The identity of every business or entity in which the public official or public employee held securities valued at one thousand dollars ($1,000) or more during the reporting period.

(g) A listing by name and address of:

(i) each creditor to whom the public official, public employee, or consultant, and the official or employee or consultant's immediate family members owed a debt in excess of one thousand dollars ($1,000) at any time during the calendar year, other than for a credit card or retail installment contract, and the original amount of the debt and amount outstanding

(h) Every officership, directorship, trusteeship, or other fiduciary relationship held in a business during the disclosure period, the term of office, and the annual compensation.

(i) The amount of every loan made to someone by the public official or public employee and their immediate family members in an amount of one thousand dollars ($1,000) or more, the original amount of the loan and amount outstanding, rate of interest, payment schedule, and the name and address of the person to whom the loan was made.

(j) The name of a lobbyist who is:

(i) an immediate family member of the public official or employee;

(ii) a partner of the public official or employee or of an immediate family member;

(iii) an officer or director of the public official or public employee's employer, or employer of the public official or public employee or an immediate family member; or

(iv) a business associate of a public official or public employee or member of the public official's or public employee's immediate family.

(2) The information shall be filed on a form prescribed by the Commissioner of Political Practices.

(3) The Commissioner of Political Practices shall prepare and publish summaries of the reports required by this section, and shall provide for public dissemination of such summaries and reports.

§ 15 Review of Statements

(1) The Commissioner of Political Practices shall:

(a) review each statement filed in accordance with this Act for compliance with its provisions; and

(b) notify the individual on whose behalf the statement is filed of an omission or deficiency.

§ 16 Access to Statements

(1) The Commissioner of Political Practices shall make statements and reports filed with the Commission available upon the written request of an individual for public inspection and copying during regular office hours. The Commission shall make copying facilities available free of charge or at a cost not to exceed actual cost. A statement may be requested by mail, and the Commission shall mail a copy of the requested statement to the individual making the request upon payment of appropriate postage costs.

(2) The Commission shall compile and maintain an index of reports and statements filed with the Commission to facilitate public access to the reports and statements.

§ 17 Technical Violations of Disclosure Requirement

The Commissioner of Political Practices may, in his/her discretion, determine that errors or omissions on statement of economic interests are inadvertent and unintentional and not an effort to violate a requirement of this act and may be handled as technical violations not subject to the provisions of this act pertaining to violations. Technical violations must remain confidential unless requested to be made public by the person filing the statement. In lieu of all other penalties the Commissioner of Political Practices may assess a technical violations penalty not exceeding fifty dollars ($50).

§ 18 Establishment and Composition of the Montana Ethics Commission

(1) Except as expressly provided otherwise, the Commission is responsible for administering the provisions of this chapter. The Commission shall have the power and duties set forth in this Act.

(2) The Commission is established as an independent authority.

(3) The Commission consists of five (5) members. The members are appointed in the same manner as prescribed in 5-1-102, MCA. A member of the Commission must be a citizen of the United States and resident of this state. A member of the Commission shall not be a:

(a) public official; or

(b) public employee, except as the fifth member, who must be chosen by consensus of the other four (4); or

(c) candidate; or

(d) lobbyist of lobbyist's principal;

or a member of the immediate family of such an individual while a member of the Commission.

(4) A member of the Commission serves a term of four (4) years. However, the initial members of the Commission serve the following terms:

(a) One (1) member serves a term of one (1) year.

(b) One (1) member serves a term of two (2) years.

(c) One (1) member serves a term of three (3) years.

(d) Two (2) members serve a term of four (4) years.

(5) An individual may not serve more than two (2) consecutive terms as a member of the Commission. A member of the Commission continues in office until a successor is appointed and has qualified.

(6) (a) In the event a vacancy occurs on the Commission, the appointing authority of the seat needing an appointment shall designate a successor.

(b) In the event the appointing authority at the time a vacancy occurs is of the opposite political party than that of the appointing authority that made the appointment that is vacant, the majority or minority leader in the same house of the same political party as the appointing authority that made the original appointment of the commissioner whose position is vacated shall designate the successor.

(7) Election and Duties of the Chair and Vice Chair. The chair and vice chair of the Commission are elected by a majority of the members of the Commission. The chair and vice chair serve a term of one (1) year, and may be re-elected. The chair presides at meetings of the Commission. The vice chair presides in the absence or disability of the chair.

§ 19 Montana Ethics Commission Meetings

The Commission meets at the call of the chair or a majority of its members. A quorum consists of three (3) or more members. An affirmative vote of three (3) or more members is necessary for Commission action.

§ 20 Removal of a Commission Member

(1) The governor may remove or suspend a member of the Commission upon filing with the Commission a written finding of the member's misfeasance or malfeasance, and upon serving a copy of the written finding on the member removed or suspended.

(2) The removal or suspension may be appealed immediately to the first district court and may take precedence over all other matters pending before the court.

§ 21 Expenses for Commission Members

A member of the Commission serves without compensation, but is afforded actual and necessary expenses incurred in the performance of duties.

§ 22 Commission Staff

(1) The Commission may employ and remove at its pleasure an executive director to perform its functions. The executive director shall have the responsibility for employing and removing other personnel as may be necessary.

(2) An executive director shall administer the daily business of the Commission, and

perform the duties assigned by the Commission.

(3) The Commission shall fix the compensation of its employees. The staff of the Commission is outside of the statewide classification pay schedule. A member of the staff of the Commission shall not be:

(a) a public official; or

(b) a candidate;

while a member of the staff of the Commission.

(4) A member and an employee of the Commission shall file a statement of financial disclosure with the Commission which shall be a public record.

§ 23 Prohibition on Political Activity by Commission Members and Staff

(1) A member of the Commission and its staff shall not participate in political management or in a political campaign during the member or employee's term of office or employment. A member of the Commission and its staff shall not:

(a) make a financial contribution to a candidate;

(b) make a financial contribution to a political committee; or

(c) knowingly attend a fundraiser held for the benefit of a candidate or political committee.

§ 24 Prohibition on Lobbying Activity by Commission Members and Staff

(1) A member of the Commission and its staff may not be a registered lobbyist or participate in lobbying activities that would require the individual to register as a lobbyist, unless the lobbyist activities are:

(a) authorized by the Commission;

(b) conducted on behalf of the Commission; and

(c) permitted under state law.

§ 25 Advisory Opinions

(1) The Commission may render advisory opinions concerning this Act based upon actual or anticipated circumstances, when requested in writing by:

(a) a public official or public employee;

(b) a former public official or former public employee; or

(c) a person who is personally and directly involved in the matter.

(2) An advisory opinion request by a public official or public employee concerning his or her own affairs or the affairs of a subordinate public official or employee or potential public official or public employee shall be confidential.

(3) An advisory opinion request by a former public official or former public employee concerning his or her own affairs shall be confidential.

(4) An advisory opinion request by a person concerning his or her own affairs with regard to potential public service shall be confidential.

(5) An advisory opinion shall be in writing and must be made available to the public, but in the case of a confidential advisory opinion, the identity of the person requesting the opinion and of a person whose affairs are involved in the circumstances described in the request for the advisory opinion, are confidential.

(6) An advisory opinion shall be deemed rendered when signed by three (3) or more Commission members subscribing to the advisory opinion, and must be issued no more than thirty (30) calendar days after submission of the request for an advisory opinion.

(7) A Commission member who agrees with the advisory opinion but for different reasons than as stated may file a written concurring opinion.

(8) A Commission member who disagrees with the advisory opinion may file a written dissenting opinion, which will be placed at the end of the majority opinion, or at the end of a concurring opinion, if any.

(9) Commission attorneys may issue advice either orally or in writing concerning this Act based upon actual or anticipated circumstances when requested when such advice is consistent with this Act or previous advisory opinions issued by the Commission, provided that such advice shall be confidential when an advisory opinion on the matter would be confidential. Advice so issued by Commission attorneys need not be made available to the public. Such confidential and oral opinions shall be non-binding.

(10) An advisory opinion requested under this section and any related internal Commission materials requested or prepared as a result of such an advisory opinion request shall be confidential.

(11) The confidentiality of an advisory opinion may be waived either:

(a) in writing, by the person who requested the advisory opinion; or

(b) by majority vote of the members of the Commission, if a person makes or purports to make public the substance or any portion of an advisory opinion requested by or on behalf of the person. The Commission, may in such an event, also vote to make public the advisory opinion request and related materials.

§ 26 Conduct of Investigations

(1) The Commissioner of Political Practices shall conduct investigations, inquiries, and hearings concerning any matter covered by this Act and certify its own acts and records.

(2) The Commissioner of Political Practices must determine within fourteen (14) calendar days whether to:

(a) conduct a formal investigation; or

(b) dismiss the complaint, in whole or in part, as frivolous or having no basis for formal investigation.

(3) When the Commissioner of Political Practices determines that assistance is needed in conducting investigations, or when required by law, the Commissioner of Political Practices shall request the assistance of other appropriate agencies.

§ 27 Adoption of Rules

The Commission shall adopt, amend, repeal, and enforce rules to implement this Act.

§ 28 Prescription of Forms and Preservation of Documents

The Commissioner of Political Practices shall prescribe and provide forms for reports, statements, notices, and complaints, and other documents required by this Act. Documents filed with the Commission as public records must be retained for at least four (4) years from the date of their receipt.

§ 29 Access to Information for Investigations

The Commissioner of Political Practices may require the cooperation of a state agency, official, employee, and other person whose conduct is regulated by this Act. An individual shall make information reasonably related to an investigation available to the

Commissioner of Political Practices on written request.

§ 30 Annual Report of the Montana Ethics Commission

No later than January 1 of each year, the Commission shall report to the legislature and the governor on the Commission's activities in the preceding year. The report must contain the names and duties of each individual employed by the Commission, and a summary of Commission determinations and advisory opinions. The Commission shall prevent disclosure of the identity of a person involved in confidential advisory opinions. The report may contain other information on matters within the Commission's jurisdiction and recommendations for legislation as the Commission deems desirable.

§ 31 Publication of Information

The Commission shall publish and make available to the persons subject to this Act and the public explanatory information concerning this Act, the duties imposed by it, and the means for enforcing it.

§ 32 Education Outreach

(1) The Commission shall, within six (6) months of the effective date of this Act:

(a) implement the educational programs it considers necessary to effectuate this Act; and

(b) produce educational materials in plain language explaining the obligations of public employees and elected officials.

§ 33 Oaths and Subpoenas

(1) The Commission may:

(a) administer oaths and affirmations for testimony of witnesses; and

(b) issue subpoenas by a vote of three (3) or more members, subject to judicial enforcement, for the procurement of witnesses and materials relevant to the Commissioner of Political Practice's investigations, including books, papers, records, documents, or other tangible objects.

§ 34 Other Duties

The Commission may perform the other acts, duties, and functions authorized by this Act that it deems appropriate in connection with this Act.

§ 35 Complaints

(1) The Commissioner of Political Practices shall accept from an individual, either personally or on behalf of an organization or governmental body, a verified complaint in writing that states the name of a person alleged to have committed a violation of this Act, and sets forth the particulars of the violation.

(2) The Commissioner of Political Practices shall forward a copy of the complaint and a general statement of the applicable law with respect to the complaint to the respondent.

(3) If the Commissioner of Political Practices determines that the complaint does not allege facts sufficient to constitute a violation of the Act, he/she shall dismiss the complaint and notify the complainant and the respondent. If the Commissioner of Political Practices determines that the complaint alleges facts sufficient to constitute a violation of the Act, an investigation may be conducted with respect to an alleged violation.

(4) If the Commissioner of Political Practices determines that information the Commissioner has received:

(a) provides an adequate basis for the belief that a violation of the Act has been committed; or

(b) that an investigation of a possible violation is warranted;

an investigation may be conducted with respect to an alleged violation.

(5) If the Commissioner of Political Practices, during the course of an investigation, or upon the receipt of information finds probable cause to believe that a violation of the Act has occurred, he/she may, upon their own motion, make a complaint in writing, stating the name of the person who is alleged to have committed the violation of the Act, and set forth the particulars thereof.

§ 36 Amendment of Complaints

(1) If a verified complaint has been filed, or if the Commissioner of Political Practices has issued its own complaint, the Commission may allow amendment of the verified complaint if additional violations of the Act are alleged and verified by the original complainant or by the Commissioner.

(2) An amended complaint must be approved through an order signed by a majority of the members of Commission. The original complainant or the Commissioner of Political Practices shall forward a copy of the amended complaint to the respondent.

§ 37 Right to Appear

(1) The Commission shall afford a public official or employee who is subject of a complaint an opportunity at a preliminary hearing to explain the conduct alleged to be in violation of the Act. A public official or employee who is the subject of a complaint has the right to appear with or without legal counsel and be heard under oath and to offer information which may tend to exonerate the public official or employee of probable cause to believe that there has been a violation of the Act.

(2) Unless requested otherwise by the respondent this hearing shall not be open to the public.

§ 38 Right to Request an Investigation of One's Own Conduct

A public official or employee may request the Commissioner of Political Practices to make an investigation of the public official's or employee's own conduct, or of allegations made by another individual as to the public official or employee's conduct. This request must be in writing and set forth in detail the reasons for requesting an investigation.

§ 39 Statute of Limitations

(1) Action may not be taken on a complaint filed more than three (3) years after the violation of the Act is alleged to have occurred.

(2) Nothing herein shall bar proceedings against a person who by fraud or other device prevents discovery of a violation of the Act.

§ 40 Referral of Evidence of a Violation of Law

Notwithstanding of the provisions of confidentiality of investigations, the Commissioner of Political Practices may, in his/her discretion, turn over to an appropriate government agency upon request or as a matter of course, apparent evidence of a violation of law.

§ 41 Authorization to Conduct a Formal Investigation

(1) Before the Commissioner of Political Practices may subpoena a witness, take sworn statements, or compel the production of examination of books and papers with respect to an investigation he/she shall file a notice of a complaint and formal investigation with the Commission. Such notice shall define the nature and scope of the Commissioner of Political Practice's inquiry.

(2) The Commission may quash or limit the scope of an investigation after a proceeding specified in Section 30 upon a showing of clear and convincing evidence there exists no basis for a complaint and that the matter is frivolous.

(3) The Commissioner of Political Practices shall complete the formal investigation within sixty (60) days of his/her decision to conduct a formal investigation. At the conclusion of the formal investigation, if the Commissioner of Political Practices determines through the investigation that probable cause exists to believe that a violation of the Act has occurred then he/she shall issue to the respondent a notice to appear before the Commission, setting forth:

(a) Findings of fact and conclusions of law that demonstrate probable cause exists to believe a violation of the Act has occurred.

(b) The date, time, and place the hearing before the Commission will take place pursuant to the provisions in Montana Adminstrative Procedure Act (MAPA).

(c) The possible penalties or sanctions that may be imposed against the respondent in the event the Commission finds a violation of the Act occurred.

(4) In the event the Commissioner of Political Practices determines that no probable cause exists to prosecute the respondent then he/she shall file a written notice of no probable cause and his/her findings and conclusions with the Commission.

(5) If the Commissioner of Political Practices finds probable cause to believe that a violation of the Act had occurred he/she may waive further proceedings if the respondent agrees to remedy or correct the alleged violation which may include the payment of fines or acceptance of other sanctions. The Commissioner of Political Practice's waiver of further proceedings may be contingent upon the respondent's timely and actual completion of the recommended or voluntary corrective action. The Commission may issue an order which approves the remedial or corrective action taken by the respondent, and the Commissioner of Political Practice's decision to waive further proceedings, which will then become part of the public record.

(a) If the Commission refuses to approve the settlement of the matter as recommended by the Commissioner of Political Practices then the Commissioner of Political Practices shall issue a notice of hearing pursuant to subsection (3).

(6) The Commissioner of Political Practices at the end of his/her investigation shall initiate an action against a complainant if the allegations made by the complainant prove to be frivolous, groundless, and are made recklessly or with malice, regardless if the matter did not go to formal investigation or hearing. Proceedings under such action shall be made in accordance with Section 36 and the Commission may order the complainant to pay civil penalties up to one thousand dollars ($1,000) plus pay attorneys fees and other expenses related to the investigation of the complaint to the respondent expenses incurred by the respondent for attorneys fees and other expenses related to the investigation of the complaint. Such action by the Commissioner of Political Practices shall supersede other civil remedies

available to the respondent for a malicious or frivolous complaint, but any other civil recovery arising out of the same complaint shall be reduced by the amount recovered under this Section.

§ 42 Hearing Procedures

(1) The Commission shall conduct a hearing pursuant to the provisions of MAPA with the exception that if a hearings examiner is appointed he/she must:

(a) be a licensed attorney in the state of Montana;

(b) not be an elected official or full-time employee of the executive or legislative branch; and

(c) not be a member or employee of the Commission or Commissioner of Political Practices.

(2) The Commissioner of Political Practices or his/her designee shall prosecute the case before the Commission.

(3) The respondent shall have the full rights granted under the adverse hearing proceeding specified in MAPA.

(4) If a hearing officer is appointed and a majority of the members of the Commission are not present at the hearing the Commission shall not begin deliberations until after:

(a) the proposed decision prepared by the hearings officer is served upon the Commission and the parties; and

(b) an opportunity is provided for oral arguments.

§ 43 Orders and Recommendations

(1) No later than sixty (60) days after the conclusion of a hearing to determine whether a violation of the Act has occurred, the Commission shall set forth its determination in a written decision with findings of fact and conclusions of law. The Commission shall send its written decision with findings of fact and conclusions of law to the respondent and complainant and Commissioner of Political Practices.

(2) If the Commission determines that a violation of the Act has occurred, its written decision with findings of fact and conclusions of law must contain one (1) or more of the following orders or recommendations:

(a) In the case of a state official liable to impeachment, a recommendation to the presiding officer of each house of the legislature that the official be removed from office.

(b) In the case of a public official or public employee in the classified or unclassified service, a recommendation to the appropriate appointing authority that the public official or public employee be censured, suspended, or removed from office or employment.

(c) In the case of a member of the state legislature, a recommendation to the presiding officer of the appropriate house of the legislature that the legislator be censured, suspended, or removed from office.

(d) An order requiring the public official or public employee to conform the official's or employee's conduct to the requirements of the Act.

(e) An order requiring the public official or public employee to pay a civil penalty of not more than two thousand dollars ($2,000) for each violation of the Act. The attorney general, when requested by the Commission, shall institute proceedings to recover a fine or forfeiture incurred under this section

not paid by, or on behalf of, the person against whom it is assessed.

(f) Other recommendations or orders, including:

(i) forfeiture of gifts, receipts or profits obtained through a violation of the Act;

(ii) voiding of a state action obtained through a violation of the Act; or

(iii) a combination of the above, as necessary and appropriate, consistent with the Act.

(3) A fine imposed by the Commission, disciplinary action taken by an appropriate authority, or a determination not to take disciplinary action made by an appropriate authority is public record.

(4) This section does not limit the power of:

(a) either chamber of the legislature to discipline its own members or to impeach a public official; or

(b) a department to discipline its official or employees.

§ 44 Action by the Attorney General

(1) The attorney general may recover a fee, compensation, gift, or profit received by a person as a result of a violation of the Act. Request for action to recover such item must be made to the Attorney General as timely as possible after the decision of the Commission that such item is recoverable as fruit of violation of the Act.

(2) Action taken by the attorney general under this subsection must be brought no later than one (1) year after a determination of a violation of the Act. Such action shall be undertaken in the name of the Commission.

§ 45 Public Inspection of Records

(1) Except as provided in subsection (2) below, all Commission records are open for public inspection during normal business hours.

(2) The following records are not open for public inspection:

(a) Records obtained in connection with a request for an advisory opinion. The Commission may make records described by this subdivision public with the consent of the individual whom the records pertain.

(b) Records obtained or prepared by the Commission in connection with an investigation or complaint. However, the Commission shall permit inspection of the following:

(i) Records made public in the course of a hearing.

(ii) Verified complaints filed with the Commission.

(iii) Complaints issued by the Commission.

(iv) Probable cause decision with findings of fact and conclusions of law.

(v) Decisions with findings of fact and conclusions of law issued after a hearing.

(vi) A determination made by the Commission regarding a rehearing.

(vii) A settlement entered into by the Commission and a respondent.

(3) A person who makes or purports to make public the substance or a portion of a confidential advisory opinion requested by or on behalf of the person has waived the confidentiality of the request for an advisory opinion, and of a record obtained by the Commission in connection with the request for an advisory opinion.

(4) The Commission may publicly respond to a statement or interpretation made concerning the contents of an advisory opinion or decision it has issued or its purported to have issued.

§ 46 Forfeiture of Pension and Retirement Benefits

(1) A public official or public employee, or a survivor, heir, successor, or estate of a public official or public employee who is convicted of a felony:

(a) relating to; or

(b) arising out of;

the public official or public employee's public service, may not receive that portion of pension or retirement benefits and interest thereon paid by a public entity or public employer.

(2) A public official or public employee entering public service subsequent to the passage of this Act is deemed to have consented to this section as a condition of coverage.

§ 47 Tax Treatment of Fines and Repayments

(1) A fine, penalty, reimbursement, or other payment ordered by the Commission or court in connection with making the government whole for a transaction improperly entered into by a public official, employee or consultant, or a member of the immediate household of a public official, employee, or consultant does not qualify for a state or local tax credit or deduction.

(2) The guilt or innocence of a party making under subsection (1) has no effect upon the state or local tax consequences, nor does an admission or failure to admit guilt or complicity in a transaction.

September 20, 1994

I want to take this opportunity to thank you for reading the Montana Ethics Act.

The Council has been working diligently on this legislation since we came together under the appointment of Secretary of State Cooney in August of 1993. I believe we have developed draft legislation that goes a long way toward establishing a fair but high standard of ethics accountability in Montana government. You can be assured that by our efforts, serious attention has being given to this important issue and that your concerns about ethics in government are being forthrightly, honestly and realistically addressed.

In our undertaking to develop draft ethics legislation for Montana, we examined other states ethics laws, studied various model acts, read articles on ethics in government and even met with leading experts in the ethics field. At times we agreed with the information, and at times we did not. However, in the end, we took those areas that we felt would work for Montana and developed the legislation you have just read.

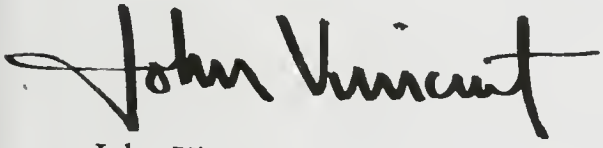
Now it is your turn. We want to hear from you. Send us your comments and suggestions on the Ethics Act. Let us know what you like or don't like. Help us to make this a Montana Ethics Act.

Next, join us at our final Ethics Advisory Council meeting in Helena on October 12th. At this meeting we will take public testimony and examine the comments we have received on the draft legislation. It should prove to be a very exciting, yet demanding meeting as we finalize the draft legislation.

I would also like to take this time to thank and commend Secretary of State Mike Cooney for having taken the initiative and fortitude toward the daunting task of ethics reform legislation. Having served in the Montana State House of Representatives for 16 years, I know the feelings toward ethics legislation. Your tenacity is to be admired.

Finally, I want to thank the Ethics Advisory Council for all of their hard work, commitment and perserverance. You have earned a hearty "thank you" from all Montanans.

Sincerely,



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Written comments that will be presented at the October 12th meeting will be accepted through October 10th.

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